IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4802 OF 2007

Shri Subhash Yashwant Mane : Petitioner

versus

Sou.Hemalata Vijaysinh Patil

and others : Respondents.

Mr.A.S.Khandeparkat with Mr.A.P.Kulkarni for the Petitioner.

CORAM : A.P.DESHPANDE, J.

DATED : SEPTEMBER 27, 2007.

P.C.

1. The present Petitioner instituted a suit for specific performance of contract against the defendants and placed reliance on two agreements. Defendant Nos.1 to 3 filed an application at Exhibit 65 under Section 37 of the Bombay Stamp

Act for impounding of the documents viz. the agreements. The trial Court allowed the application and passed an order directing the petitioner/plaintiff to deposit the amount of stamp duty. The petitioner has been directed to deposit a sum of Rs.3,77,728.48 for agreement dated 2.7.1998 and a sum of Rs.7,62,080/- for agreement dated 27.5.1998. So the total amount is above Rs.11/- lacs. The trial Court did not specify the time within which the amount has been directed to be deposited by the petitioner. The said order passed by the trial Court was challenged by filing a Writ Petition bearing No.1226 of 2005 before this Court. This Court has observed in its order dated 28.11.2005 that on determination of the real nature of the documents in question, the question of payment of exact amount will have to be determined. With a view to ensure the payment from the petitioner, a direction has been issued for investment of the amount in a nationalised bank in stead remitting the same to the Collector under Section 37 of the Bombay Stamp Act. This Court directed that if the agreements are held to be conveyance, then the trial Court shall proceed in accordance with Section 37 of the Bombay Stamp Act. The next

question raised about sharing of the amount of stamp duty, was also left open to be adjudicated by the trail Court on which decision would depend the exact amount of liability of the petitioner. Further direction has been issued that if the trial Court finds that the agreements in question do not constitute conveyance then the amount deposited by the petitioner would be refunded. This Court as well did not stipulate the time within which the amount was to be deposited by the petitioner. I am informed by the learned counsel for the Petitioner that the order passed by this Court dated 28.11.2005 was challenged before the Supreme Court and the Supreme Court has dismissed the SLP thereby rendering finality to the order.

2. After dismissal of the Special Leave Petition by the Supreme Court the present petitioner/plaintiff filed a Review Application seeking review of the order passed by the trial Court which has merged in the order passed by this Court. It is thus obvious that the application moved by the petitioner for review of the order was wholly misconceived. The trial Court has rejected the applications at Exhibits

124 and 125 which are respectively moved for seeking condonation of delay and review of the impugned order.

3. Perused the said order. Same does not call for any interference at the hands of this Court in exercise of writ jurisdiction. In this view of the matter, the learned counsel for the petitioner seeks permission to withdraw the writ petition with liberty to move the trial Court for deposit of the amount and for framing of issues which emerge for consideration in view of the order passed by the High Court. Petition is allowed to be withdrawn with liberty as prayed for.

[A.P.DESHPANDE,J]